

Appln No. 09/944,534
Amdt date October 30, 2008
Reply to Office action of June 30, 2008

REMARKS/ARGUMENTS

Pending Claims:

Claims 1-39 remain in the application. All claims stand finally rejected under 35 USC 103(a). For the reasons set forth below, Applicants also believe that the current grounds of rejection under 35 USC 103(a) should be reversed and this application should be allowed.

The Examiner's Response to Arguments:

The Examiner did not accept the logic of Applicant's arguments made in the Amendment of March 21, 2008. The Examiner states that Applicant argues (with respect to claim 1), "There is nothing in Kara that teaches or suggests the claimed feature of having free postage, much less any postage that will expire after a certain period time'. However, Examiner disagrees. Kara discloses, "A postage meter must be adjusted, serviced and replenished manually... when the amount of postage programmed within the postage meter has expired, the postage in the meter must be replenished. To be replenishes, a postage meter must be manually unplugged...and an employee must visit a U.S. Post Office to have the meter programmed with additional postage" [col., lines 46-55].

The Examiner continues, and states "Although, Kara does not explicitly state that the postage expires after a period time, this feature is inherent in the disclosure of Kara since the meter had to take some arbitrary period of time before the postage was used up. Further, while it is true that Kara does not teach expiring free postage value, the difference between expiring free postage value and postage value are only found in the non-functional descriptive material and are not functionally involved in the steps recited. The transferring, storing, and resetting steps would be performed the same regardless of the descriptive material since none of the steps explicitly interact therewith. In other words, the postage value would only mean something to a person monitoring the output after the final step of the method. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Ngai*, 70 USPQ2d 1862 (CAFC 2004); *In re*

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Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).”

Applicant has carefully considered the Examiner’s position and studied the cases cited by the Examiner, and respectfully submits that the cited cases instead support Applicant’s position.

The case *In re Ngai* deals with a kit for amplifying RNA. One claim of the patent application was rejected because it simply added a new printed subject matter limitation. The inventor had argued that based on *In re Gulack*, “[the] [d]ifference between an invention and the prior art cannot be ignored merely because those differences reside in the content of the printed matter”. The PTO argued that from *In re Gulack* “the critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.” In *In re Gulack* the Board rejected a claimed directed to a circular band designed for mathematical and educational purpose. The invention consisted of “(1) a band, ring, or set of concentric rings; (2) a plurality of individual digits imprinted on the band or ring at regularly spaced intervals; and (3) an algorithm by which the appropriate digits are developed.” The examiner rejected the claim based on the fact that a circular band with items printed upon it was well known in the art. However, the Board reversed, finding that the numbers printed on the band had a functional relationships itself the court stated that quote the digits are related to the bend in two ways: (1) the band supports the digits; and (2) there is an endless sequence of digits – each digit residing in a unique position with respect to each other digit in an endless loop. Thus, the digits exploit the endless nature of the band.” The *Ngai* court continues that the *Gulack* court concluded that the prior art neither disclosed nor suggested either feature of *Gulack*’s invention. In the *Ngai* case, the court found dissimilarity with *Gulack*, stating “there the printed matter and the circularity of the band were interrelated, so as to produce a new product for “educational and recreational mathematical” purposes. In contrast, the *Ngai* court found that “here, addition of a new set of instructions into a known kit does not interact with the kits in the same way as the numbers interrelated with the band. In *Gulack*, the printed matter would not achieve its educational purpose without the band, and the band without the printed matter would similarly be unable to produce the desired result. Here, the printed matter in no way depends on the kit, and the kit

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does not depend on the printed matter. All that the printed does is teach a new use for an existing product.” As the *Gulack* court further pointed out, “[w]here the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability.”

In *In re Lowry*, the patent application in question is for a data processing system for the storage, use and management of information residing in memory. The Board had determined that Lowry’s data structures were analogous to printed matter and therefore the specific features of the constituent attribute data objects (ADOs) deserved no patentable weight without a functional printed matter-substrate relationship. Despite cautions from the *Gulack* court, the Federal Circuit found that the Board erroneously extended a printed matter rejection under sections 102 and 103 to a new field in this case, which involves information stored in memory. However, the Court of Appeals for the Federal Circuit found that the facts distinguished from the printed matter cases, as the printed matter cases ‘dealt with claimed defining as the invention certain novel arrangements of printed lines or characters, useful and intelligible only to the human mind’. In contrast, the *Lowry* court found that the printed matter cases have no factual relevance where the invention as defined by the cases requires that information be processed not by the mind, but by a machine, the computer. *Id. at pg. 1034.*

The *Lowry* court continues that “[a]s part of its burden to establish a *prima facie* case of obviousness, see *In re Oetiker*, 977 F.2d 1443, 1445... the burden of establishing the absence of a novel, nonobvious functional relationship rests with the PTO. ‘If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent.’ *Id.* The PTO did not establish that the ADOs, within the context of the entire claims, lack a new and nonobvious relationship with the memory. The ADOs follow a particular sequence that enables more efficient data processing operations on stored data. The ADOs facility addition, deletion, and modification of information stored in the memory. In sum, the ADO’s perform a function. *Gulack* require no more.”

In the present situation, the method is for use with PC postage system and computers are exclusively used to manipulate the data and free postage value. Thus, the findings of *Lowry* are to be followed. Representative claim 1 reads as follows:

1. A method for controlling the distribution of expiring free postage value in a PC postage system, comprising the steps of:

transferring a first portion of said expiring free postage value to a postage meter;
storing a second portion of said expiring free postage value in a free postage account; and
resetting a balance of said free postage account upon expiration of said free postage value after a time period.

The relevance of the limitation of “expiration of said free postage value after a time period” is that if the free postage value is not used up within a time period, e.g., during a 30 day initial trial period, then the free postage value in the free postage account will expire and the internet postage vendor that granted the credit will not lose the entire value of the free postage credit, which was the case before this invention.

The Examiner position that Kara discloses that “[a] postage meter must be adjusted, serviced and replenished manually... when the amount of postage programmed within the postage meter has expired, the postage in the meter must be replenished. To be replenishes, a postage meter must be manually unplugged...and an employee must visit a U.S. Post Office to have the meter programmed with additional postage” teaches nothing about the claimed method. Indeed, Kara describes old fashioned postage meters that need to be taken to the post office for replenishing of postage.

The Examiner continues: “Although, Kara does not explicitly state that the postage expires after a period time, this feature is inherent in the disclosure of Kara since the meter had to take some arbitrary period of time before the postage was used up. Further, while it is true that Kara does not teach expiring free postage value, the difference between expiring free postage value and postage value are only found in the non-functional descriptive material and are not functionally involved in the steps recited. The transferring, storing, and resetting steps would be performed the same regardless of the descriptive material since none of the steps explicitly

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interact therewith. In other words, the postage value would only mean something to a person monitoring the output after the final step of the method. Limitations that are not functionally interrelated with the useful acts, structure, or properties of the claimed invention carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability.”

As discussed above, the limitation of descriptive material “expiring free postage value” is not just descriptive material, but is functionally interrelated with the useful acts, structure, or properties of the claimed invention since the whole purpose of the claimed invention is to provide a method for controlling the distribution of expiring free postage value in a PC postage system, with the “second portion of said expiring free postage value in a free postage account; and resetting a balance of said free postage account upon expiration of said free postage value after a time period.” Indeed, this limitation is part and parcel of the claim. Accordingly, the Examiner’s position that “difference between expiring free postage value and postage value are only found in the non-functional descriptive material and are not functionally involved in the steps recited” is traversed.

Claims Rejection Under 35 U.S.C. § 103(a)

a. Rejection of Claims 1, 21, 22, 24, 33, 34 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Storace in view of Kara and Yakal:

In Item 6, page 4 of the Office action, the Examiner rejects claims 1, 21, 22, 24, 33, 34 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Storace [US 4,864,506] in view of Kara [US 5,819,240] and Kathy Yakal (a PC Magazine reference, “Yakal”). Applicant notes that the Examiner appears to have copied the content of the Office action of November 19, 2007 that also rejected claims 2; 3, 33, 34, 34, and 36; 9; 10; 11; 12 and 13; and 21 and 33 on the same grounds. Applicant is unsure if this was intended, but in any case, Applicant addresses the Examiner’s entire discussion below.

The Applicants have carefully studied these three cited references, and respectfully request that the rejection should be withdrawn, and that all claims should be allowed.

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Regarding claim 1, the Examiner states that Storace discloses transferring a first portion of postage value to a postage meter [col 4, line 64-col 5, line 5; col 8, lines 1-8]; and storing a second portion of said postage value in a postage account [col 2, lines 19-25]. The Examiner states that Storace does not explicitly disclose resetting a balance of said postage account upon expiration of said postage value, but that Storace discloses replenishing a postage meter when necessary [col 2, lines 25-36; col 4, lines 35-37]. The Examiner continues that Kara discloses replenishing a postage meter account upon expiration of postage amount [col 1, lines 46-51], and therefore it would have been obvious to modify the invention of Storace to include the method disclosed by Kara so that the user can avoid disruption in service. The Examiner continues by acknowledging that Storace does not disclose that the postage is free postage, but by stating that Yakal discloses providing free postage to a customer's postage meter on a PC [pg. 1, para. 2-4], and therefore it would have been obvious to one of ordinary skill in the art to modify the invention of Storace to include the method disclosed by Yakal to encourage use.

Turning first to the Storace reference, it is directed to a very specific postage meter recharging system that uses a telephone exchange in order to transfer postage value to a postage meter. In the Storace, a remote accounting station can be linked to a bank account and when the value of the postage meter station reaches a certain low value, an automatic dialing device will place a call via telephone exchange to the remote accounting station and if there are sufficient funds in the postage meter account, will transfer value to the postage meter station via the telephone exchange, preferably at night when phone lines are less busy. As the Examiner acknowledges, nothing in Storace discloses resetting a balance of the postage account upon expiration of free postage value.

The Examiner next states that Kara discloses replenishing a postage meter upon expiration of postage amount, and that it would have been obvious to one having ordinary skill in the art at the time of the invention, to modify the invention of Storace to include the method disclosed by Kara so that a user can avoid disruption in service. As further explained above, Kara likewise does not disclose whatsoever the concept of expiring postage. Rather, the "Background of the Invention" section of Kara at column 1, lines 46-51, states that "[s]econd, a

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postage meter must be adjusted, serviced and replenished manually; e.g., each day the date must be adjusted manually, periodically the stamp pad must be re-inked, and when the amount of postage programmed within the postage meter has expired, the postage in the meter must be replenished. To be replenished, a postage meter must be manually unplugged, placed into a special case (the meter is of a significant weight), and an employee must visit a U.S. post office to have the meter reprogrammed with additional postage." So, it is clear that the discussion in the background of the invention section of Kara is directed the amount of postage programmed within the postage meter expiring, or in other words, the postage being used up. Again, there is nothing in Kara that teaches or suggests the claimed feature of having free postage, much less any postage that will expire after a certain time period (to avoid loss to a company offering a sales incentive). Moreover, the claimed invention is not at all directed to preventing disruption in service, but instead is directed to preventing postage value from being wasted by a user who does not use up the "free postage" within a certain time period, e.g., within 30 days of establishing a new account. The Assignee Stamps.com Inc. has found that if new users do not begin using the service soon after initiating the services, they oftentimes will not later use the service, and that any free postage that was offered as an incentive will therefore not be used. With prior systems, this free postage, which did not expire after a period of time, would be lost to the service provider even though it was never used by the customer. With the present claimed system, if a customer decides not to avail himself/herself of the internet postage services within a certain time period, the free postage will expire, and therefore save the service provider money that would otherwise be lost. As discussed with reference to the cited cases, there is thus a functional relationship interrelationship between the limitations.

Lastly, the Examiner acknowledges that Storace does not disclose that the postage is free postage but relies on the PC Magazine reference to Kathy Yakal which discloses that in the then Neopost's Simply Postage system, a user would get the first \$50.00 worth of postage for free, plus a first month's membership fee for free, and after which it would be \$17.95 per month. Once again, nothing in Yakal discloses the concept of free postage that will expire after a period of time. Again, the recited feature of having free postage expire after a certain of time, such as

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after 30 days of initiating an account, prevents the loss of postage which might otherwise not be used. In the recited system, once free postage value is transferred to a customer's postage meter, i.e. by the service provider, e.g. Stamps.com, if it is not used within a specified time frame, such as 30 days after starting new service, it will expire and not be charged to Stamps.com! In prior art "free-postage" systems, this free and unused postage is charged no matter whether used or not and becomes very costly to the service provider. With Applicant's system, any postage that is unused within a certain time frame will automatically expire and therefore help avoid wasting valuable cash resources of the company. Based on the foregoing, Applicant respectfully submits that none of the prior art references, either alone or in combination, would make the claimed invention obvious.

With respect to the rejection of claim 2, the Examiner states that Storace further discloses the step of establishing minimum thresholds for said postage meter and transferring a block of postage value from some free postage account to said postage meter when balance of said postage account was less than or equal to said threshold refers to column 2, lines 15-31.

Likewise, the Examiner states that with respect to claims 3, 22, 24, 34 and 36, Storace discloses the step of decrementing said postage account in accordance with said transferred postage value (column 11, lines 21-23). With respect to these claims, since they all depend on allowable independent claim 1 (claims 2 and 3), claim 22 and 24 (claim 21) for claims 22 and 24, claim 33 (for claims 34 and 36), these claims should be allowable.

Turning to the rejection of claim 9, the Examiner states that Storace does not explicitly disclose notifying a user upon expiration of said free postage value, but Storace discloses notifying the user that when no more value is left in the postage meter at column 6, lines 19-26. However, as claim 9 depends on allowable claim 1, claim 9 should be allowed.

Turning to claim 10, the Examiner states that Storace further discloses the step of storing purchased postage value and balance of the postage meter in a descending register (column 4, lines 35-42). Applicant respectfully submits that Storace does not, in fact, disclose this limitation. What Storace does disclose is "information stored in the temporary memory 32, which represents crucial accounting functions such as descending balances in a descending

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register or ascending credits in an ascending register, and the like, are stored in the non-volatile memory 34, wherein they may be held while the machine is de-energized and then recalled upon the subsequent start-up." Indeed, a total balance only is recorded, whereas in the recited system of claim 10, both the purchased postage value and free postage value are stored. As noted above, the free postage is used first and will expire after 30 days, therefore, there is a need to maintain both of these values. Again, the Storace reference discloses nothing of the kind. Therefore, claim 10 should be found allowable.

With respect to claim 11, since this claim depends on allowable claims 10 and 1, it, too, should be allowed.

With respect to claims 12 and 13, as these claims are dependent upon allowable claim 1, they should be allowed.

Turning to the rejection of independent claims 21 and 33, the Examiner recites the same ground of rejection as applied in the rejection of claim 1. Applicant's arguments with respect to the allowance of claim 1 is reiterated. Indeed, nothing in the cited references discloses free postage that expires after a time period. Accordingly, claims 21 and 33 should be allowed.

b. Rejection of Claims 4, 5 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Storace in view of Kara and Yakal and further in view of Eddy et al.:

The Examiner next rejects claims 4, 5 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Storace in view of Kara and Yakal, and further in view of Eddy et al. [US 5,812,400]. With respect to claim 4, the Examiner acknowledges that Storace does not disclose the step of storing purchased postage value in an available postage count, but that Yakal discloses that the first amount of postage is free and that the user can also purchase postage in a PC account. Thus, the Examiner finds that there is free postage and purchased postage available. What the Examiner should recognize, however, is that there is no segregation of the free postage account and purchased postage account. Indeed, the free postage will remain no matter what, which is exactly the problem that this instant claimed invention was designed to overcome. The

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Examiner states that Eddy et al. disclose a postage meter containing two postage accounts and using the postage meter accounts based on prioritization [column 5, lines 14-22].

Based on this, the Examiner states that it would have been obvious to modify the invention of Storace to include the step of utilizing said expiring free postage value before said purchased postage value to facilitate distinguishing between account usages.

Applicant has carefully considered the Eddy et al. system. While it is true that the Eddy et al. reference discloses the possibility of having multiple accounts, in a prioritization arrangement to determine which account system should be used for debiting and crediting activity, there is still nothing in the combination which discloses the basic concept of free expiring postage which will expire after a period of time. Therefore, even if Eddy et al. do disclose prioritization between an internal accounting system and an external accounting system, this would still not teach or suggest the invention of free postage that will expire after a period of time. Accordingly, claim 4 should be allowed.

The Examiner further rejects claims 5 and 25 on the same grounds and Applicant respectfully submits that for the same reasons that claim 4 should be allowed, claims 5 and 25 should be allowed, as well.

c. Rejection of Claims 6-8, 23 and 35 under 35 U.S.C. § 103(a) as being unpatentable over Storace in view of Kara and Yakal and further in view of Official Notice:

The Examiner next rejects claims 6-8, 23 and 35 under Storace in view of Kara and Yakal, and further in view of Official Notice. The Examiner states that Storace does not disclose the step of displaying a sum of total expiring postage value and purchasing postage value in an available postage field, but that the Examiner takes Official Notice that it was old and well-known at the time of the invention in the postal industry to display the sum of the total postage in a postage meter. Based on this, the Examiner finds that the invention would be obvious. To modify the invention of Thiel (sic) to include the step of displaying the sum of total expiring free postage value and purchased postage value in an available postage field so that the user knows when the account needs to be replenished. The Examiner obviously continues to intend to refer

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to Storace, Kara or Yakal, instead of Thiel. In any case, however, since claims 6 and 8 are dependent on independent claim 1, claim 23 is dependent on independent claim 21, and claim 35 is dependent on independent claim 33, these claims should be allowed as well.

d. Rejection of Claims 14-20, 26-32 and 37 under 35 U.S.C. § 103(a) as being unpatentable over Storace in view of Kara and Yakal and further in view of Leon:

Turning to Item 9, the Examiner rejects claims 14-20, 26-32 and 37 as being unpatentable over Storace in view of Kara and Yakal and further in view of US Patent No. 7,085,725 to Leon.

Applicant has carefully reviewed Leon and respectfully submits that it does not teach what it is cited for. Leon teaches a blank sheet of labels that may be printed with internet postage. Some of the sheets may be provided free of charge to users and may be so identified so that the system can query the user if the user wishes to purchase additional sheets of blank labels. This is the only disclosure in Leon about anything free, and Leon certainly does not disclose free postage value.

As per claims 14, 26 and 37, the Examiner states that Storace does not disclose the step of determining the validity of the expiring free postage value in response to receipt of a print postage request and wherein the free postage account is reset in accordance with said validity determination. The Examiner states that Leon discloses determining validity of a postage value in response to free postage print request and the account owner is given another amount of free postage [column 14, line 36 to column 16, line 50]. The Examiner, therefore, finds that it would be obvious to modify the invention of Storace to include the methods disclosed by Leon so that the postage provider does not lose revenue. Again, Leon makes absolutely no disclosure whatsoever of free postage, but instead is directed to free sheets of blank labels. Accordingly, nothing in Leon in combination with the other references would lead one of ordinary skill in the art to find the recited invention patentable. Therefore, claims 14, 26 and 37 should be allowed.

Turning to the rejection of claims 15 and 27, the Examiner states that Storace does not explicitly disclose the step of determining whether the balance of said free postage value is equal to or greater than a value of requested postage and transferring a block of free postage value

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from the free postage account to the postage meter in accordance with the amount determination, but that Storace does disclose that when a meter reaches a threshold value, the postage meter is re-credited from the postage account. From this, the Examiner states that it was obvious to modify the invention of Storace to include the step of determining whether a balance of said free postage value is equal to or greater than a value of requested postage and transferring a block of free postage value from the free postage account to the postage meter in accordance with the amount determination to provide a recharging system that is transparent to its postage meter user, as suggested by Storace. Applicant has carefully reviewed the Storace reference and respectfully submits that for the same reasons discussed above in reference to claim 14, upon which claims 15-20 depend, claim 26, upon which claims 27-32 depend, and claim 37, are patentable so claims 14-20, 26-32 and 37 should be allowed.

e. Rejection of Claim 38 under 35 U.S.C. § 103(a) as being unpatentable over Leon in view of Fredman:

Turning to Item 10, the Examiner rejects claim 38 as being unpatentable over Leon in view of Fredman [US 6,526,393]. Applicant states that Leon does not disclose further generating an account to track free postage value separate from purchased postage value, checking for expiration of free postage value and setting a balance to the account to zero if the free postage value has expired, but the Fredman reference discloses generating an account that monitors free postage value and purchased value (plumber sets an account that is paid, i.e., free to user, but the value is returned if user does not utilize the postage by an expiration date, i.e., postage purchased by user). The Examiner states that, furthermore, it is inherent the postage is checked for expiration since the plumber is refunded postage for items that are not mailed by a certain date. Based on this, the Examiner finds that would have been obvious to one having ordinary skill in the art at the time of the invention to modify the invention of Leon to prove the method disclosed by Fredman to improve response times, lower prices and improve customer's experience, as suggested by Fredman.

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Applicant has carefully reviewed the Fredman reference, and respectfully submits that it does not teach or suggest the invention. The Fredman reference is a time controlled pre-paid delivery label that expires. However, unlike the present invention, this is a label that is printed that has expiring pre-postage which will expire beyond a certain time period to encourage users to respond by a certain date, otherwise, they lose the free postage advantage. Again, the Fredman is an actual postage label that has been printed in advance and sent to the user. Fredman has nothing at all to do with free postage account which allows the user to print his or her own postage and obtain free postage value within a certain time frame. Even if combined with Leon, it still lacks the claimed features. Accordingly, this grounds of rejection is traversed.

f. Rejection of Claim 39 under 35 U.S.C. § 103(a) as being unpatentable over Leon in view of Yakal and further in view of Eddy et al.:

Lastly, in Item 11, the Examiner rejects claim 39 under 35 U.S.C. § 103(a) as being unpatentable over Leon in view of Yakal and further in view of Eddy et al. The Examiner states that Leon does not disclose applying available free postage value to request to print postage if free postage value is available and applying purchased postage to the requested postage if free postage value is not available, but that Yakal discloses that the first amount of postage is free and that the user can purchase postage in a PC account. Thus, the Examiner finds that there is free postage and purchased postage available. The Examiner states that Eddy et al. further disclose a postage meter containing two postage accounts of using the postage the account based on prioritization and, therefore, it is obvious to one of ordinary skill in the art to modify the invention of Storace to include the step of utilizing said expiring free postage value before said purchased postage value so that the user is confident that he/she would like to continue to use the service, i.e., during a trial period.

Applicant has reviewed all references, including the Eddy et al. reference, and respectfully submits that even if combined as suggested by the Examiner, claim 39 would not be taught or suggested, and accordingly, should be allowed. Leon and Yakal have been discussed above and as previously discussed, Yakal does not disclose expiring free postage but rather, non-

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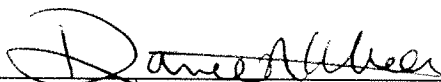
expiring free postage during a trial period. In other words, whether or not the user uses the free postage, it still costs the company the value of that postage.

Turning to the Eddy et al. reference, while it does disclose an electronic postage meter with an internal accounting system and a removal external accounting system, there is nothing in its teaching which would suggest this combination with Leon and Yakal. And even if Eddy et al. were to be combined with Leon and Yakal, it does still not lead one having ordinary skill in the art to the claimed invention since nothing in any of these references teaches or suggests free postage that will expire after a certain period of time if not used. Accordingly, Applicant respectfully submits that claim 39 should be allowed.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-39 patentably distinguish the subject invention over the prior art of record, and are in condition for allowance. Given that this case is under final rejection, Applicant would appreciate having a telephone conference with the Examiner with the intention towards moving this application forward to allowance.

Respectfully submitted,
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